

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Kundan Care Products Ltd.
E-22, Industrial Area, Bhahdrabad,
Haridwar, Uttarakhand

Vs

Executive Engineer,
Electricity Distribution Division
Uttarakhand Power Corporation Ltd.
SIDCUL, Haridwar, Uttarakhand

Representation No. 53/2019

Order

Date: - 29.11.2019

Being aggrieved with the Consumer Grievance Redressal Forum, Haridwar zone (hereinafter referred to as Forum) order dated 27.09.2019 in their complaint no. 105/2019 M/s Kundan Care Products Ltd, E-22, Industrial Area, Bhahdrabad, SIDCUL, Haridwar has preferred this petition/representation through their authorized representative Shri Divas Joshi (authorization is available on file) against Uttarakhand Power Corporation Ltd. through Executive Engineer, Electricity Distribution Division, SIDCUL, Haridwar (hereinafter referred to as respondent) with the request that Forum order dated 27.09.2019 be set aside, assessment amounting to Rs. 10,75,619.00 raised by UPCL respondent be quashed being arbitrary with no legal backing/support and contrary to Uttarakhand Electricity Regulatory Commission Regulations (hereinafter referred to as UERC Regulations).

2. The petitioner has also requested for restraining the respondent from taking any coercive action and recovery of aforesaid amount of assessment and for stay of operation of Forum's order. An interim stay was granted on 04.10.2019, hearing on stay application was held on 14.10.2019 when after hearing both parties the interim stay was extended till next hearing in the case, which was held on 22.11.2019.
3. The petitioner has stated that they have a power connection no. 2622 at their premises a breakdown occurred in the power line on 17.07.2019, the same was reported to the department. The fault was rectified and supply was normalized by the department the

same day. The respondent confirmed to them that the PT got punctured and was replaced, a copy of sealing certificate dated 17.07.2019 has been submitted with the petition, which confirms petitioner's averment about breakdown and replacement of PT vide sealing certificate no. 07/05 dated 17.07.2019 which carries petitioner's representative signatures on behalf of respondent AE (Test) and SDO (Distribution) has signed the sealing certificate.

4. Subsequently in the bill for the month of July 2019 raised on 05.08.2019 and received by them on 13.08.2019 charges of Rs. 10,75,619.00 against continuous supply charges were found added in the bill. Copy of the said bill has also been submitted with the petition. A letter was written by them to the respondent the same day regarding anomaly in the bill and requesting him to get the anomaly resolved, copy of their letter has also been submitted with the petition. In reply to their letter the respondent, respondent vide his letter no. 1290 dated 20.08.2019 has informed that as per AE (Meter) report the meter installed at their premises was recording less consumption due to the technical fault in the system, copy of this letter has also been submitted with the petition. Copy of AE (Meter)'s letter was however not provided to them. A detailed analysis carried out by the respondent has also been provided which do not carry signature of any UPCL official. This analysis is also available with the petition.
5. When the anomaly in the bill was not rectified a complaint was lodged with the Forum for resolving their grievance. The Forum however rejected the complaint no. 105/2019 vide their order dated 27.09.2019 and hence the present petition is preferred before the Ombudsman.
6. The petitioner has given the reasons for not being satisfied with Forum order as that
 - i) The copy of various letters, MRI reports as cited in the judgment of the Learned Forum was never provided to the appellant which lacks transparency on part of learned Forum.
 - ii) Most of the arguments presented by appellant during the proceedings were missing in the detailed judgment of learned Forum.

- iii) The decision states that the letter no. 2511 dated 03.06.2019 and letter no. 3001 dated 08.07.2019 of Director (Operation), UPCL has asked the UPCL officials to check the meter as the voltage of Y phase is low as per MRI report, which is contradictory to the statement as per the sealing certificate report where it is stated that as per the letter no. 2511 dated 03.06.2019 of Director (operation), meter was recording less voltages in both R&Y phases.
- iv) As per the decision, the AE (Metering) through his letter No. 128 dated 19.07.2019 submitted that meter was tested on 04.07.2019 and it was found that recording of voltages in R&Y phase is less as per MRI report and arrangement for the check meter is under progress. However Hon'ble Ombudsman is requested to take note of the fact that PT was already replaced two days back. The purpose of installing check meter is to ascertain the correctness. The integrity of the meter had already changed hence cannot be compared.
- v) The comparison of the bill does not reflect the true picture of the consumption of any industry. Which is further confirmed by consumption in the month of August whereby the consumed unit is 44352 units with the new PT installed (copy of the bill has been placed at Annexure-F).
- vi) The decision also stated that accepting Complainant's meters is running slow the UPCL has estimated the consumption on the basis of reading of 3 months immediately preceding 02/2019.

7. The petitioner have also given the following grounds of appeal

- i) Director (Operation) through his letter no. 2511 dated 03.06.2019 and letter no. 3001 dated 08.07.2019 had asked the field officers to inspect the meter in view of less voltage in Y phase. The Director operation has nowhere mentioned that there was any defect in the meter. They have submitted that it was also likely that there would have been low voltage prevailing in the Y phase corresponding to that instant of MRI report.
- ii) The AE (Meter) vide his letter no. 128 dated 19.07.2019 has submitted that meter was tested by him on 04.07.2019 and two phases R and Y were showing less voltages. The petitioner has stated that in HT meter the voltage is supplied to the meter for measurement of electricity consumed through individual phase

PT in their view this could not be a coincidence that voltage for both the phases were recording low. It was more likely that voltages in both the phases R and Y was actually low and meter was recording this low voltage correctly as per the voltage transformation. This submission is confirmed by the fact that the PT was punctured/ blasted because it is a very well known fact that the voltage does have the puncturing effect. In fact puncturing of the PT confirms the voltage fluctuations in the distribution 11 KV line which belongs to UPCL.

- iii) The AE (Meter) further confirmed the testing of meter on 04.07.2019 and that the PT blasted/punctured before the check meter could be installed. They have denied this submission on the ground that if the meter was actually tested there was no need to install a check meter. The petitioner has referred sub clause 3.1.3 (iv) of UERC (The Electricity Supply Code) Regulations, 2007 (hereinafter referred to as Supply Code) which provides the procedure for testing of meter and submission of test report on the prescribed format Annexure v of the said regulation and they have concluded that had AE (Meter) had carried out test in accordance with UERC Regulations the instant dispute would not have arisen.
- iv) They have pleaded that the electricity once left unmeasured, cannot be measured with 100% accuracy, it can only be estimated. The UERC Regulation 2007 and Electricity Act, 2003 has not given any kind of authority to the Distribution Licensee for estimation whatsoever of any kind. The power of such assessment lies with Electrical inspector under clause 26 (6) of Indian Electricity Act, 1910. Under Electricity Act, 2003 and UERC Regulation 2007 there is no provision that authorizes the licensee to go for assessment except in 2 occasions as provided in Supply Code (defective meter where assessment is carried out on basis of average of three preceding readings and NR where assessment is carried out on the basis of preceding 12 months.)
- v) The UPCL has tried to exploit 2 clauses of Supply Code– 1 clause relating to slow running of meter (sub clause 3.1.3 (6) and 2 clause related to defective meter (sub clause 3.2 (1), billing during defective meters) for their benefit. The UPCL officials were not sure whether the meter is defective or is running slow. They have assessed previous 3 months reading as per defective meter clause and had applied it on a slow running meter which they presume. The fast/slow

running of meter can only be confirmed by installing a check meter or by checking in accordance with UERC approved guidelines. A meter which was not tested as per provisions cannot be declared running slow. The respondents are arbitrary and no legal backing from any UERC regulations. There is no UERC regulation which provides for assessment on the basis of average 2 proceeding billing cycles readings for a slow running of meter.

- vi) They have quoted sub regulation 3.1.1 (4) of Supply Code which states “*It shall be the responsibility of licensee to maintain and keep the meter in working order at all times*” and sub clause 3.3.1 (2) states “*the licensee shall raise the bill for every billing cycles based on actual meter readings.*” In the instant case the bill of disputed amount has been raised on assessment basis as against actual meter readings.
- vii) Even after checking dated 04.07.2019 there was sufficient time with UPCL to test the meter for slowness as they predicted They however did not take any account till 17.07.2019 the date when breakdown occurred. It confirms that UPCL officials were sure regarding the correct working of meter and its accuracy.
- viii) Executive Engineer’s submission that the assessment has been carried out as per MRI and tamper report is denied on the basis that they had actually carried out the illegal assessment on the basis of theory of averages, whereas at many places in the decision the UPCL have confirmed that sometimes voltage is reduced in 1 phase and sometimes in 2 phases. This logic of average cannot be applied for the similar conditions.

8. Having submitted their case as above the petitioner has prayed that

- i) Set aside the order dated 27.09.2019 passed in complaint case no. 105/2019 by learned CGRF, Haridwar.
- ii) Quash and set aside the assessment of Rs. 10,75,619.00 raised by UPCL/respondent being arbitrary with no legal backing/support and is contrary to UERC Regulations.
- iii) Pass any order or direction, or provide any other relief which the Hon’ble Ombudsman deem fit in the interest of justice.

9. The Forum in their order have observed that after perusal of facts of the case and arguments from both parties that additional assessment amounting to Rs. 10,75,619.00 is justified on the basis of MRI and tamper reports which has technical reasons to justify their assessment and thus they feel that the amount of assessment is correct and payable by the complainant, so their complaint is not liable to be accepted and thus they have dismissed the complaint.
10. The respondent has submitted his written statement vide letter no. 2269 dated 21.10.2019 wherein he has stated that
- i) A sum of Rs. 10,75,691.00 (the correct amount as per bill for 07/2019 is 10,75,619.00) was added in the bill of the consumer for the month of 07/2019 which was explained to the petitioner vide letter no. 1290 dated 20.08.2019 that the said assessment was raised due to less recording of energy in the meter due to technical defect.
 - ii) On checking of meter no. UPC 98326 installed at petitioner's premises, it was found that meter was showing less consumption. The Director Operation had also instructed vide his letter dated 03.06.2019 and 08.07.2019 that in a study of MRI report for the month of 03/2019 voltage on Y phase was being shown low and he directed for checking of the meter. In compliance of above directions the AE (Meter) after checking of the meter submitted his report vide his letter no. 128 dated 19.07.2019 informing that the meter was checked by him on 04.07.2019. The voltage on R and Y phase were being recording less and as per MRI report while 11 KV PRMC was being arranged for installation of check meter a breakdown in 11 KV existing PRMC at the premises of the consumer occurred on 17.07.2019 in which PT was blasted so the 11 KV PT was replaced and supply was normalized, but check meter could not be installed to check the defect attributable to low voltage to the meter and hence he recommended for assessment on the basis of past documents (MRI report, Tamper report, consumption etc). The meter installed at consumer's premises was not defective but due to rusting/technical defect in CT/PT installed with the meter, the meter was getting low voltage from 11 KV PT, due to which meter was recording less consumption. The part payment was not accepted for want of full payment of the bill. In a comparative statement of consumption and

demand recorded for the corresponding period in 2018 and 2019 i.e. from February to July in each year. The consumption and demand recorded from the month of 02/2019 to 07/2019 is less as compared within the month of 02/2018 to 07/2018. As the percentage of less recording was not available assessment from 02/2019 to 17.07.2019 amounting Rs. 44,22,483.00 has been worked out on average of recorded consumption in the month of 11/2018, 12/2018 and 01/2019 and after deduction (adjustment) of the amount of bills raised from 02/2019 to 17.07.2019 amounting to Rs. 33,46,864.00, a sum of Rs. 10,75,619.00 was added in the bill of 07/2019.

iii) The respondent has submitted that if meter is recording less for any reason as in the instant case due to non connectivity of CT/PT leads to the meter or due to any technical infirmity due to non availability of voltage to the meter continuously. If the meter was recording less than in accordance with sub regulation 3.1.1 (5) of Supply Code Regulation due to any defect in the meter or connected equipments the meter is considered in the category of a defective meter and hence assessment for the difference for the month 08/2018 to 03/2019 on the basis of average from 05/2018 to 07/2018 has been raised.

11. On the basis of his above submissions he has requested that the petition be dismissed.
12. The petitioner has submitted his rejoinder on 04.11.2019 stating as follows: At the outset the petitioner has specifically and categorically denied the contents of written statement filed by the respondent being devoid of merits, baseless and non cogent explanation. The petitioner has reaffirmed the contents of paragraphs of their appeal as follows:
 - A) The appeal has been preferred by the petitioner being aggrieved with the order dated 27.09.2019 of the Forum in their complaint no. 105/2019 before the said Forum, which was dismissed by the Forum out rightly without appreciating and considering the documents placed on record judiciously.
 - B) The respondent filed his written statement before the Ombudsman and anything stated in the said written statement contrary to the facts is denied in totality.
 - C) The respondent in their written statement have not given point wise reply and have not answered any submissions made by the petitioner in the appeal/petition.

13 The petitioner has submitted para wise reply on merits of the written statement as follows:

- i) Contents of para 1 of written statement are wrong, false and denied as copy of the analysis provided have not been signed by any authority and AE (Meter)'s report has also not been provided.
- ii) Contents of para 2 of the written statement are wrong, false and denied. The respondent has confirmed that on checking the meter was found recording less. The petitioner has contested that if the test can confirm that the meter is recording less, it should also confirm the extent to which the meter was recording less. He has quoted sub clause 2 (consumer meter of clause 18 of calibration and periodical testing of meters of Center Electricity Authority Installation and Operation of Meters Regulations, 2006 and sub regulation 1 and 8 of clause 3.1.3 of Testing of meters of UERC Supply Code, Regulations, 2007 and having quoted the above regulations the petitioner has stated that as the meter along with CT and PT was not tested as per above regulations the reliability cannot be ensured. Further there is no significance of any report generated from a meter whose accuracy is already under scanner and is disputed. He has corroborated his stand on the basis that the reduction in energy consumption after the PT was replaced on 17.07.2019 confirms the various parameters recorded and shown by the meter is unreliable, false and should not be relied upon. Further the respondent has failed to establish that the meter was running slow or was recording less energy and hence the assessment raised by the respondent is arbitrary, illegal and liable to be quashed.
- iii) Contents of para 3 of written statement are wrong, false and denied in view of CEA Regulation 2006. CT and PT are the parts of meter, respondent's confirmation of the technical fault in the CT/PT establishes that meter was defective. It is wrong to allege that the meter was recording less consumption in view that the respondent has never established the meter is running slow or recording less.
- iv) This para needs no comments.
- v) The petitioner has given a comparative statement of consumption and maximum demand in the month of July, August and September in 2018 and 2019 which shows that after replacement of PT the consumption has reduced.

On the basis of this comparative statement the petitioner has stated that the assessment raised by the respondent on the basis of consumption recorded in past is arbitrary and illegal.

- vi) In reply to para 6 the petitioner has stated that this needs no comments as the respondent has not established that the meter was recording less and as such the respondent had no authority to raise the disputed assessment in view of Electricity Act, 2003 and Supply Code Regulations, 2007 so the assessment of Rs. 10,75,619.00 is liable to be quashed.
- vii) The petitioner has held the contents of para 7 of written statement as wrong and false, and have denied the same as there is no such provision in clause 3.1.1 (5) on the contrary sub clause 3.2 (1) “Billing during the period defective/stuck/stopped/burnt meter remained at site which states as *“The consumer shall be billed on the basis of the average consumption for the past three billing cycles immediately preceding the date of the meter being found or being reported defective. These charges shall be leviable for a maximum period of three months only during which time the licensee is expected to have replaced the defective meter.”*

The petitioner has further stated that the respondent has put the meter under defective category for the reasons stated in their written statement. The relevant regulation authorizes the respondent to raise the bill on average consumption of previous 3 months however the respondent cannot raise the bill beyond 3 months till the defect in the meter has been removed.

14. The petitioner has also submitted the following additional points:

- i) The respondent has admitted in para 5 of written statement that CT/PT was defective. The petitioner has stated that since CT/PT are part of the meter as per CEA definition, this clearly establishes that meter was defective and as per sub regulation 3.2.1 “billing during the period defective/stuck/stopped/burnt meter remained at site” the respondent can raise the bill on the basis of 3 billing cycles and that too for a maximum period of 3 months. In the instant case if the respondent believes that the meter is defective (however the same has not been established by the respondent) he cannot raise the bill beyond 3 months till the defective meter has been repaired or replaced. Contents of para 6 of

Ombudsman's order dated 21.10.2019 in petition no. 35/2019 has been reproduced to corroborate his stand.

- ii) Some irregularity in the dates in the bill of October 2019 has been pointed out to show that the maximum demand in the bill for the period 31.08.2019 to 30.09.2019 has wrongly been mentioned by manipulation.
 - iii) It is stated that the assessment in the instant case was raised without being given a fair chance to the petitioner and without being given a proper show cause notice to respond which is against principle of natural justice. With the above submissions the petitioner has reiterated his prayers as made in the petition.
15. Hearing in the case was held on 22.11.2019 as scheduled. Both parties appeared. The arguments on behalf of petitioner were made by the authorized representative Shri Divas Joshi. Shri Sehgal, Executive Engineer and his Assistant Engineer (revenue) appeared on behalf of the respondent. Both parties submitted their arguments. Apart from oral submissions, the petitioner submitted a written argument duly substantiated by case laws from Hon'ble Supreme Court, Hon'ble Tamil Nadu High Court, Hon'ble Maharashtra Electricity Regulatory Commission and Ombudsman Electricity Uttarakhand. The respondent also submitted a written reply to the rejoinder of the petitioner which are being deliberated hereunder:
- i) Reply to the rejoinder of the petitioner submitted by the respondent vide his letter no. 2444 dated 21.11.2019 in which he has submitted that
 - a) Periodical checking of HT meters and LT meters are required to be carried out once in a year and in 5 years respectively in accordance with sub regulation 3.1.3 of Supply Code and checking of almost all the consumers under the division is being done by Test Division at appropriate times.
 - b) As per sub regulation 3 of Supply Code defect in CT/PT is considered as a defect in the meter. Accordingly as in the instant case a technical defect had come in the PT due to which connectivity to the meter was not continuous and due to carbon deposition some turns of the PT winding were shorted as a result voltage on Y phase was low as compared to that

in B phase and therefore from the month of 02/2019 the meter was recording less energy than the actual consumption and hence assessment for this period has been raised.

- c) It is denied that the table given under point no. 5 of the rejoinder is not mentioned in any of the department but he has given a table showing month wise consumption and maximum demand in the corresponding months from February to July in the years 2018 and 2019 to show that in the year 2019 from the month of 02/2019 the consumption and maximum demand has been recorded less than that in the corresponding month in the year 2018.
- d) He has stated that as per sub regulation 3.2.1 of Supply Code, 3.2.1 in the event of meter being declared defective the aforesaid sub regulation provides for billing on the basis of average of 3 previous bills and such average bills shall be issued only for 3 billing cycles only. It is further stated that in the instant case consequent upon damage of PT on 17.07.2019 the meter is being put under the category of defective meter. As per MRI and Load Survey Report the voltage on 2 phases is being shown low from the month of 02/2019 due to which meter is recording less consumption than the actual. Hence bills were not issued on the basis of defective meter. He has corroborated his statement in the table given by him, in which voltage on R, Y and B phases on the different dates of MRI has been given and against each entry remarks have also been given against the voltage on 02.01.2019 and 17.07.2019. He has mentioned “Voltage में अन्तर नहीं है।” and on all other dates of MRI he has mentioned that “R, B में Y से कम voltage है।”
- e) UPCL a public undertaking purchases the electricity from outside and distribute it to the consumers as such any loss caused due to payment of bills by a consumer for consumption less than that of his actual consumption, such loss is recovered from enhancement in the rates of electricity of other consumers. So he has requested that the petition be dismissed and orders for recovery of the amount of assessment be issued.

ii) The petitioner has submitted a written argument duly substantiated by case laws as follows:

a) In reply to respondent's allegation that there was technical defect in the CT/PT and hence they are alleging a defect in the meter which follows the definition of the meter of CEA Regulations (which is reproduced). He has argued that owing to defect in the meter the energy recorded was less than the actual but the same had never been established beyond doubt by the respondent. Further, since working of the meter had been disputed by the respondent they are bound to get the same tested by the electrical inspector for establishing the defect thereby assessment of energy consumed as envisaged in section 26 (6) of the Indian Electricity Act, 1910 which is very much applicable in the present case in view of section 185 (Repeal and Saving of Electricity Act, 2003) as there is no corresponding provision in the revised Act. By quoting sub section 3.1.3 (7) of Supply Code (reproduced), he has maintained that section 26 (6) of Indian Electricity Act, 1910 is applicable, since the aforesaid provisions have not been complied with the respondent has no authority to carry out assessment of energy allegedly consumed but not recorded and hence the supplementary charges/bill raised is liable to be quashed.

b) He has quoted the following judgments

a. Hon'ble Supreme Court judgment dated 21.04.2005 in Civil Appeal of Bombay Electric Supply and Transport Undertaking vs Laffans (India) Pvt. Ltd. and others wherein the Hon'ble Court has established that the respondent cannot be allowed to raise the additional demand if the reference was not made as per section 26 to Electrical Inspector. In the judgment the Hon'ble Supreme Court has established "The meter though it is alleged by the appellant to have remained not correct,

"The meter though it is alleged by the appellant to have remained not correct, readings have been regularly recorded, bills raised and also paid by the consumer-respondent No. 1. According to Section 26(6), the readings would bind the appellant and respondent No. 1 both. It has never been the case of the appellant at any stage that the

meter was not correctly recording the consumption of electricity on account of being non-functional due to any fraud committed or device or trick adopted by the consumer-respondent No. 1 or that the body seal of the meter was found broken or tampered with. The respondent No. 1 was accepting and honouring the demands raised by the appellant and, therefore, respondent No.1 cannot be expected to have raised a dispute and sought for a reference for determination by Electrical Inspector. The appellant could not have, therefore, revised the demand for such period based on average consumption during the previous year.”

Further he has quoted sub regulation 3.1.2 (1) of Supply Code which provides “...in case of complaints of incorrect billing, entries made in the past in such cards/notebooks should be considered sufficient evidence for deciding the matter” hence he has submitted that with reference to the said judgment and Supply Code the meter reading during the period disputed by the respondent is binding on both the parties.

- b. The Hon’ble Supreme Court judgment dated 10.11.1987 in misc petition of MPEB and others vs Basanthi Bai

“It was established by the apex court that the Board is not competent to prepare and send a supplementary bill in respect of energy consumed by the respondent from the one phase which stopped functioning and did not record any consumption of energy.”

- c. Hon’ble High Court Tamil Nadu judgment dated 06.09.2019 in writ petition no. 13141 of 2011 in the matter of M/s Axels India Ltd. vs Unpretending Engineer, Tiruvalnnamalai Electricity Distribution Circle

“...the Hon’ble High Court dismissed the extra amount raised by the Distribution licensee for the period of defective meter. Since the defective meter was not tested as per the applicable regulations.”

- c) He has referred AE (Meter)’s test on meter on 04.07.2019 and referring to sub regulation 3.1.3 (5) and (6) of Supply Code that if the meter on testing found running fast or slow beyond limits specified in Rule 57 (1)

of Indian Electricity Rules, 1956 the Licensee was required to replace/rectify the defective meter within 15 days of such testing. In the instant case the respondent did not do so and the damaged PT was replaced only after it got damaged. This confirms that meter was not defective as the respondent never shown any intentions to change the meter and the respondent thus now cannot claim said meter as defective, which was damaged (PT) on 17.07.2019. He has maintained that the respondent cannot be provided advantage of their omissions and he has quoted the Hon'ble Supreme Court judgment dated 21.04.2005 in support of his claim which is reproduced as "The appellant cannot be permitted to take advantage of its own act and omission."

- d) The respondent had never established that the meter was not recording the actual consumption hence the supplementary bill raised is illegal and arbitrary.
- e) With reference to Supply Code he has mentioned that there are 2 types of defects in the meter, (i) meter stopped recording and (b) meter in working, however accuracy has not been as per rule 57 (1). He has maintained that the first one is not applicable in the instant case as bills were issued regularly with metered consumption. The respondent without establishing the inaccuracy in the meter as per rule 57 (1) and Supply Code cannot claim that the meter is defective. If they are disputing correctness of the meter the same should have been referred to Electrical Inspector which has not been done. As such meter cannot be assumed to be defective and with reference to Hon'ble Supreme Court judgment dated 21.04.2005 the assessment is liable to be quashed.
- f) Consumption after replacement of PT has been on lower side as compared to similar period of previous years which is contrary to the submissions of the respondent.
- g) By referring to order dated 23.02.2005 in case no. 19/2004 at Maharashtra Electricity Regulatory Commission in the matter of amendment/supplementary bills whereby the Commission has ordered *"After considering all these factors and the submissions made, the Commission directs that the supplementary/ amendment bills issued in the*

circumstances set out at paras 42 and 43 above from 10th June, 2003 (the date of coming into force of EA, 2003) and up to notification of the Supply Code -(a) should be withdrawn, if due meter testing has not been done with the results intimated to the consumer”

- h) Giving reference of written statement he has mentioned that the respondent never denied that there is no voltage drop in the distribution lines belonging to them.
- i) He has denied to rely upon respondent’s submission that they were trying to check the meter and were arranging PRMC panel. Since the letter submitted was written as afterthought after the PT got damaged.
- j) This is not a case of application of wrong multiplying factor (MF), however this case belongs to assessment of energy during the defective period of the meter as alleged by respondent for which the respondent was having no authority.
- k) He has referred this Ombudsman’s order dated 25.01.2019 in representation no. 34/2018 wherein the question whether assessment can be raised on basis of tamper report without establishing that the meter is not recording as per actual consumption has been answered very clearly and with detailed justification. The same has been reproduced as under
“14. B) Whether such assessment is sustained in the light of provisions of Law and UERC Regulations.

Again for the sake of argument if we assume that this assessment as per B phase missing or even the assessment which has been imagined by respondent on the basis of low current in R phase, was correct we need to examine the basis in law for revising firm bills issued on the basis of MRI for the period December 2016 to June 2017.

i) Assessment against a firm bill issued on metered consumption as per MRI report can be modified as per provisions of Supply Code, UERC (Release of New HT & EHT Connections, Enhancement of Loads) Regulations, 2008 or Tariff provisions as may be applicable in a particular case. The provisions of HT Regulations, 2008 sub regulation 14 stipulate as under:

“14. Meter Reading

The readings of the meters or meter referred to in Clause 12 above shall be taken at regular intervals by distribution licensee through MRI and the readings so taken shall be conclusive and binding on both the consumer and the distribution licensee as to the amount of maximum demand and electrical energy supplied to the consumer, except in case of tampering of such meters whereby distribution licensee shall have right to proceed as deemed fit. Distribution licensee shall provide a copy of MRI report alongwith the monthly bill. Distribution licensee also agrees to provide full MRI report along with load survey on payment of amount as decided by the Commission from time to time.”

Supply Code sub regulation 3.1.3 stipulates testing of meter for the purpose of ascertaining accuracy of the metering equipment as below:

“The Licensee shall conduct periodical inspection/testing and calibration of the meters as per Rule 57 of the Electricity Rules, in the following manner:

(1) Periodicity of meter tests - The Licensee shall observe following time schedule for regular meter testing:

| Category | Interval of testing |
|--------------------------------|----------------------------|
| <i>Bulk supply meters (HT)</i> | <i>1 year</i> |
| <i>LT meters</i> | <i>5 years</i> |

CT ratio and accuracy of CT/PT, wherever applicable, shall also be tested along with meter.”

In case the meter is alleged to be slow, which is not the case in the instant case, provisions of sub regulation 3.1.3 (6) apply which provide as follows:

“(6) When the meter is found to be slow beyond permissible limits, as specified in Rule 57 (1) of the Indian Electricity Rules, 1956 and the consumer does not dispute the accuracy of the test, the Licensee/consumer, as the case may be, shall replace/rectify the defective meter within 15 days of testing. The consumer shall pay the difference due to the defect in the meter at normal rates, based on percentage error, for a maximum period of not more than 6 months or less depending on period

of installation of meter prior to date of test and up to the date on which defective meter is replaced/rectified.”

Sub regulation 3.1.2 (1) of Supply Code.

“The meter shall be read once in every billing cycle. The Licensee shall ensure that meter readings are regularly entered in a card/book kept with the meter of each consumer. Each such entry should be made and initialed by the meter reader. In case of complaints of incorrect billing, entries made in the past in such cards/note books should be considered sufficient evidence for deciding the matter.”

ii) Provisions of Tariff RTS 7 provide

“2 (iii) Supply to Steel Units shall be made available at a voltage of 33 kV or above through a dedicated individual feeder only with check meter at substation end. Difference of more than 3% between readings of check meter and consumer meter(s), shall be immediately investigated by the licensee and corrective action shall be taken.”

“3 (ii) ToD Meters shall be read by Meter Reading Instrument (MRI) only with complete dump with phasor diagram, Tamper reports, full load survey reports etc. shall be downloaded for the purpose of complete analysis and bills shall be raised as per ToD rate of charge.”

To take advantage of provisions for revision of firm bill as above, the first prerequisite is installation of a check meter/comparison meter on the same or different CT/PT as the case maybe for checking the meter (inclusive of the CT/PT where applicable) on site. This has not been done in the instant case. Further, while the meter has been tested in Lab and found Ok, there is no allegation of tampering of the meter.

Hence it is observed that the assessment based on EE (Test) letter dated 29.08.2017, raised in the instant case, is in violation of the aforesaid regulations and therefore cannot be sustained. Further, even if assessment is imagined to be based on R phase current being low, which is not the case, the regulations quoted above would apply, and the assessment would still be in violation of the said regulations.”

- 1) The respondent have raised the assessment without giving any opportunity to the petitioner for submission of his

explanation/clarification and have added the assessed amount Rs. 10,75,619.00 in the bill of July 2019 through an entry “continuous supply charges”. He has maintained that in this circumstances the subject claimed of Rs. 10,75,619.00 is illegal and liable to be quashed and set aside. He has submitted that in view of above submissions since the defect in the meter has not been established beyond doubt hence, reading of the meter which are regularly taken, bills raised is binding on both the parties and the same has been established in the Hon’ble Supreme Court decision dated 21.04.2005. Hence the meter readings during the period disputed by the respondent are binding on the respondent as well as on the appellant. Thus the assessment/supplementary bill raised is liable to be quashed.

16. In view of his written argument duly corroborated with case laws as referred in the written argument, copies of which have also been submitted as also in view of his submissions that since the defect in the meter had not been established beyond doubt hence readings of the meters which were regularly taken, bills raised by respondent is binding on both parties and the same has been established in the Hon’ble Supreme Court decision dated 21.04.2005. Thus the assessment/supplementary bills raised is liable to be quashed. Thus he has requested that his prayers already submitted in petition and rejoinder as well as in his written arguments may kindly be acceded to.
17. All documents as well as case laws submitted by petitioner have been perused. Forum’s case file was summoned and has also been gone through. Relevant UERC Regulations as well as Tariff provisions have also been referred to. After careful examination of the records on file and hearing arguments from both parties, it has been borne out that:
 - i) The petitioner is a consumer of the respondent with a connection no. 2622 having contracted load 500 KVA meter no. UPC-98326 is installed at consumer’s premises. He is getting supply at 11 KV.
 - ii) The Director (Operation) vide his letter dated 2511dated 03.06.2019 addressed to Executive Engineer, Test Division with copy to Executive Engineer, Distribution and other authorities have pointed out that Y phase potential was low as per MRI data for the month of March 2019 and directed a checking of

the meter specifically PT and PT circuit at site and assessment be raised accordingly. He has also directed to take corrective action on the abnormalities observed. No action on this letter appears to have been taken by the concerned field officers as no report in compliance to this letter has been adduced by the respondent. The Director (Operation) again vide his letter no. 3003 dated 08.07.2019 in which reference of his earlier letter dated 03.06.2019 has also been given, has pointed out that as per MRI data recorded in April 2019 potential is low in Y phase and he again directed the Executive Engineer, Test Division, Haridwar for checking PT and PT circuit at site and raise the assessment accordingly. He has also directed him to take corrective action on the abnormalities as pointed out in his letter.

- iii) AE (Meter) vide his letter no. 128 dated 19.07.2019 submitted his report to Executive Engineer, Distribution Division, SIDCUL, Haridwar wherein he has submitted that Director (Operation)'s letter dated 03.06.2019 was received by him on 02.07.2019 and he immediately inspected the meters on 04.07.2019 and have submitted MRI report. In respect of the connection no. 2622 of M/s Kundan Care Pvt. Ltd., the petitioner, while enclosing MRI reports has reported that meter of this consumer is recording less on R & Y phase as compared to B phase. He requested the SDO, Distribution to arrange PRMC for installation of check meter at the premises of the petitioner. But meanwhile the existing PT at the consumer's premises experienced a breakdown on 17.07.2019 completely disrupting supply to the consumer. After replacement of the damaged PT of the existing PRMC the supply was normalized, a copy of sealing certificate dated 17.07.2019 has also been submitted with his above referred letter. He has requested the Executive Engineer, Distribution that assessment as per departmental rules based on old tamper be raised and amount be recovered.
- iv) While the AE (meter) in his aforesaid letter has stated that checking of the meter at site was carried out by him on 04.07.2019 in compliance to Director (Operation)'s letter dated 03.06.2019 but no checking report has been submitted by him to the Executive Engineer, Distribution neither any such report has been adduced by the respondent with his written statement or written reply to the rejoinder of the petitioner, which was submitted by him vide his letter dated 21.11.2019 on 22.11.2019 during arguments. What the AE (Meter)

has submitted the MRI tamper reports on different dates which shows that potential on R & Y phases to the meter was low in different magnitudes at different times as compared to that on B phase. These MRI tamper reports were already available with them and thus in fact no checking has been done by AE (Meter) as directed by Director (operation). A perusal of the tamper reports show low voltage since February 2019 till 17.07.2019 when PT blasted in a breakdown and was replaced. It is evident that the phenomenon of low potential input to the meter as per the MRI reports submitted by them, was well in their notice since February 2019. It is also evident that they were aware of the right course of action to be taken in such a situation as the AE (meter) in his letter has mentioned that a check meter was to be installed which could not be done for want of PRMC and as a breakdown happened in the meantime on 17.07.2019 resulting into damage of existing PT. But this appears to be a false excuse for their inaction. The abnormality existing in the metering equipment i.e. unequal voltage availability to the meter being low on R & Y phase as compared to B phase was persisting from February 2019 till 17.07.2019 and they have 5 months and a half month's time to conduct check meter study, even they had one and a half month's time for installing a check meter after the abnormality was pointed out by Director (operation) in his first letter dated 03.06.2019 and hence they failed to establish the percentage of less recording if any by the meter due to low voltage input on R & Y phases.

18. While the MRI reports as submitted by the respondent shows low voltage input to the meter, there is no test report to establish the quantum of energy that escaped recording in the meter due to the aforesaid abnormality which could have only been established by a check meter study, in the absence of which the respondent assessed the energy that could not be recorded on the basis of average monthly consumption recorded by the meter in the previous 3 months prior to February 2019 i.e. for the month of November 2019, December 2018 and January 2019 and after adjustment of the regular monthly bills raised during the period under dispute a demand of Rs. 10,75,619.00 was raised in the bill of July 2019 through an entry "continuous supply charges". That created a grievance to the consumer. On enquiry the respondent vide his letter 20.08.2019 informed them that the meter installed at their premises was recording less due to technical fault and Rs. 10,75,619.00 have been assessed to

recover the cost of such less recording and added in the bill for the month 07/2019. Not being satisfied with respondent's reply the petitioner approached Forum. The Forum after hearing both parties and perusal of records held the assessment as justified and dismissed their complaint.

19. The respondent neither in his written statement dated 21.10.2019 nor in his reply dated 21.11.2019 to petitioner's rejoinder has been able to establish his case. His submissions in both these letters appears very casual, lacking seriousness, responsibility and are irrelevant to the case on some points, as is evident from his averments and are pointed out hereunder.

In written statement under para 2 he has submitted that meter was checked on 04.07.2019 but no checking report has been submitted. His submissions under para 3 of the written statement are without technical findings. His averments in para 6 & 7 of the written statement with regard to the period on the basis of which assessment has been raised and the period of assessment are contradictory, while in para 6 he has mentioned that assessment for the period 02/2019 to 17.07.2019 has been raised on the basis of average consumption in the month of 11/2018, 12/2018 and 01/2019, in para 7 he has submitted that assessment for the period 08/2018 to 3/2019 has been raised on the basis of average consumption from the month of 05/2018 to 07/2018. Further in para 7 he has mentioned that under sub regulation 3.1.1 (5) of Supply Code a meter is categorized as defective due to fault in any of the concerned devices. He has misquoted the said regulation. The regulation 3.1.1 (5) relates to filling of sealing certificate at the time of installation or replacement of any meter and it has no concern with defective meter.

Similarly infirmities and contradictions in letter dated 21.11.2019 have been noted. In para 1 no definite comment about checking of the meter of the petitioner as required under sub regulation 3.1.3 of Supply Code has been given only a general reply has been given. Submission under para 2 are without technical findings. Under para 4 in the table for the MRI dates from 01.3.2019 to 04.07.2019 voltage in R & Y phases have been shown less than that on Y phase, but in the remark column the remarks has been mentioned otherwise being "R, B में Y से कम वोल्टेज है". Submission under para 5 of the said letter is irrelevant where he has mentioned that "...आपके संज्ञान में यह भी लाना है कि उत्तराखंड पावर कारपोरेशन लि० एक पब्लिक उपक्रम है जो बाहर से

विद्युत क्य कर अपने सभी उपभोक्ताओं को वितरित करता है ऐसी स्थिति में किसी उपभोक्ता द्वारा वास्तविक उपभोग से कम उपभोग के विद्युत बीजक के भुगतान से हुई हानि की पूर्ति विभाग को अन्य उपभोक्ताओं की विद्युत दरों में वृद्धि कर की जाती है।”

In fact he has erred in raising the assessment treating the existing meter as defective, while as per relevant sub regulation 3.1.4 of Supply Code, the meter is termed as defective when it does not record any energy or demand i.e. stops working completely but in the instant case the meter was working but might be getting incomplete voltage input due to some external interference or obstruction or fault in the PT and hence the regulation that is applicable in case of defective meter cannot apply in the instant case. Moreover, in the case of defective meter (IDF) the Licensee can raise only 3 bills in accordance with sub regulation 3.2 (1) of Supply Code after which they are not entitled to raise any bill without installing a correct meter. In the instant case the only way of establishing the percentage of less energy if any, that might have been recorded due to low voltage input in 2 phases R & Y was only a check meter study, which they did not conduct although they had sufficient time as aforesaid to arrange PRMC and get the check meter study conducted. In the absence of such study the quantum of less energy, if any recorded by the meter cannot be ascertained or established and any assessment raised through any other way whatsoever shall be arbitrary, illegal and unjustified and cannot be upheld. Such being the case the respondent have failed to establish and justify their claim for additional demand of Rs. 10,75,619.00 for the disputed period.

20. The petitioner have contested their case duly corroborated with relevant regulations and provisions in the Electricity Act, 2003, Electricity Rules, 1956 as also Indian Electricity Act, 1910 section 26 (6) read with section 185 (repeal and savings). The case laws as referred to above and submitted with their written arguments submitted on 22.11.2019 at the time of arguments. The relevant regulation and case laws submitted by the petitioner supports their view that as the respondent have not established the quantum of energy that have been escaped recording by the meter due to low voltage input on R & Y phases during the disputed period which could have only been done by installing a check meter. The demand raised by them is arbitrary and illegal and is not sustainable and thus be quashed.

21. It would be appropriate to clarify that whether the instant case is a case of defective meter or slow running meter or none of them. As regards the defective meter sub regulation 3.1.4 of Supply Code provides that a meter is considered as defective when it has stopped working completely and not recording anything even if voltage and current inputs are available and in that case, the Licensee are entitled to bill a consumer for a maximum period of 3 months on the basis of average consumption recorded during previous 3 billing cycles prior to the date the meter became or declared defective, in accordance with sub regulation 3.2 (1) of Supply Code. In the instant case the meter has been recording throughout the disputed period from 02/2019 to 17.07.2019 and regular monthly bills have duly been issued as per recorded consumption energy and demand. Although as claimed by the respondent that since voltage to the meter on R & Y phase was low than that of B phase the meter has recorded less than what was actually consumed by the petitioner. Although they did not establish the extent of such alleged less recording attributable to the phenomenon of lesser voltage input on 2 phases and hence this is not a case of defective meter and thus assessment raised by respondent is not justified legally.

As regards the case of slow running of meter, a meter is categorized as slow if it is found to be slow beyond permissible limit as specified in Rule 57 (1) of Indian Electricity Rules, 1956 and in such a case adjustment of bills for a maximum period of not more than 6 months are adjusted in accordance with sub regulation 3.1.3 (6) of Supply Code. This is also not the case here as the veracity of meter was not checked.

Such being the case the status of existing meter during the disputed period was that as claimed by the respondent based on MRI report but not on any checking or testing. The meter might be recording less consumption and demand than what has presumably been consumed/drawn by the petitioner. In such a case in order to find out the quantum of energy that might have been escaped recording in the meter due to the phenomenon of low voltage on R & Y phases, the only way was to establish through installation of a check meter, the quantum of such escaped energy and then and then only the respondent could have raised a demand for such escaped energy. Since they have not conducted any such study by installing a check meter although they had sufficient time of about 5 and half months from February 2019 to 17.07.2019 and even one and half month time after issue of Director (Operation)'s letter dated

03.06.2019 and since they have not established the quantum of energy that might have escaped recording, they cannot raise any demand through a methodology not applicable in the case at their own volition and thus the demand raised by them on the basis which is applicable in case of defective meter cannot be held justified.

22. In view of above deliberations, facts of the case and relevant regulations and statutes, the assessment for Rs. 10,75,619.00 raised by the respondent based on average consumption for previous 3 months prior to the disputed period is not justified being inconsistent with the regulations and without establishing, the quantum of energy that might have not been recorded by the meter due to availability of low voltage input on R & Y phases of the meter during the period February 2019 to 17.07.2019 which could have only been established by a check meter study. Such being the case the demand amounting to Rs. 10,75,619.00 raised by the respondent is hereby quashed. The petition is allowed. Forum order is set aside. The stay stands vacated.

Dated: 29.11.2019

Subhash Kumar
(Ombudsman)